

CITY OF RAYMOND
Pacific County, Washington
Special Audit
January 1, 1996 Through December 31, 1996

Schedule Of Findings

1. Rock Sales By The Public Works Commissioner To The City And Its Public Works Contractors Exceed the Amount Allowable By Law

The City of Raymond is a code city with a commission form of government. Under the commission form of government, as defined in RCW 35.17.010, each of the City of Raymond's three commissioners is responsible for a certain area of operation. One commissioner serves as mayor. One commissioner is in charge of finance and accounting. The third commissioner is the Superintendent of Streets and Public Improvements or "Public Works Commissioner."

On January 1, 1996, Michael Runyon began serving a four year term as "Public Works Commissioner." Mr. Runyon owns a rock quarry known as Hawk's Superior Rock. During 1996, the City of Raymond and contractors who were constructing public works projects for the city purchased \$93,005.01 of rock from Hawk's Superior Rock of which \$56,716.77 was sold to contractors on contracts awarded prior to 1996. The following table summarizes the different categories of rock sales by Mr. Runyon's company to the city and its contractors:

Direct sales to the city during 1996	\$ 8,977.97
Sales to contractors for contracts entered into during 1996	11,917.80
Sales to contractors for contracts entered into before 1996 on change orders executed during 1996	<u>15,392.47</u>
Total sales executed under Mr. Runyon's supervision	<u>\$36,288.24</u>

The minutes from the commission meeting of February 6, 1996, indicate all change orders are to be reviewed by Mr. Runyon and then sent to the city engineer for approval. Mr. Runyon issued a memo the next day to the city engineer authorizing her to sign and execute all future change orders. However, as the "Public Works Commissioner," Mr. Runyon has the ultimate responsibility over such matters and may not abrogate that responsibility by having his employee approve and sign change orders in his stead.

RCW 42.23.030 states in part:

No municipal officer shall be beneficially interested, **directly or indirectly**, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made

for the benefit of his or her office, or accept, **directly or indirectly**, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein . . . PROVIDED FURTHER That in the case of a particular officer of a . . . noncharter optional code city . . . the total volume of such contract or contracts authorized in this subsection . . . shall not exceed \$9,000 in any calendar year. (Emphasis added.)

RCW 42.23.050 states:

Any contract made in violation of the provisions of this act shall be void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. Any officer violating the provisions of this act shall be liable to the municipality of which he is an officer for a penalty in the amount of three hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon him by law.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this act shall work a forfeiture of his office.

By selling more than \$9,000 of rock to the city and its contractors in one year Mr. Runyon is in violation of RCW 42.23.030 and subject to the penalties of RCW 42.23.050. By virtue of his responsibilities as "Public Works Commissioner," he is put in the awkward position of supervising contractors for whom he is also a supplier or subcontractor. In effect, he is indirectly supervising himself.

It is Mr. Runyon's contention that sales to a contractor of the city are not subject to the conflict of interest statutes as long as there is no prearrangement between himself and the contractor.

We recommend Mr. Runyon forfeit the office of "Public Works Commissioner" and pay any penalties required by statute.

We further recommend the Washington State Attorney General review this matter and take whatever action deemed necessary under the circumstances.